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IN THE

Supreme Court of the United States

October Term, 1962

No. 1061

UNION OBREROS CERVECERIA CORONA,

Petitioner,

vs.

FRANCISCO MEDINA VEGA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered in the above entitled case on November 30, 1962. Rehearing of said judgment was denied on February 1st, 1963.

Opinion Below

The findings of facts, conclusions of law and judgment of the Superior Court of Puerto Rico in Civil Case Number 60-8370 is unreported and is reproduced in Appendix C, pages 21-31. The opinion and final judgment of the Supreme Court of the Commonwealth of Puerto Rico in case R 61-128, is reported in 84 P. R. R. , and is printed in Appendix B hereto, *infra*, pp. 13-22. The Order of the Supreme Court of the Commonwealth of Puerto Rico denying the Motion to Vacate Judgment and of Reconsideration, is unreported and is printed in Appendix B hereto, *infra*, p. 23.

Jurisdiction

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on November 30, 1962. Motions for Reconsideration and to Remand Mandate were denied on February 1st, 1963. The jurisdiction of this Court is invoked under 28 *U. S. C.*, Section 1258.

Questions Presented

I. Whether in the enactment of legislation in the field of wages and hours in interstate commerce, a political subdivision, state or commonwealth, must follow federal law to the effect that labor organizations operating in interstate commerce be free from interference in its relation with its officers and agents.

II. Does the exclusion set forth in Section 3(d) of the Fair Labor Standards Act, 29 *U. S. C.*, Section 203(d), preempt the field, thus precluding a political subdivision of the United States of America from enacting legislation contrary thereto.

III. Whether the courts of the Commonwealth of Puerto Rico must follow the prohibition set forth in Section 3(d) of the Fair Labor Standards Act, 29 *U. S. C.*, Section 203(d), which excludes from its definition of "employer," a labor organization in its relations with its officers and agents, in a wage claim filed by a former president of a labor organization operating in interstate commerce against said union.

IV. Whether the president of a labor organization, when visiting employers with the purpose of ascertaining that said employers are complying with the terms of collective bargaining agreements entered into with the Union, is performing work not germane to the duties of the presi-

dent of a labor organization, and further, outside the definition of an "executive" and/or "administrative" employee as defined in the Fair Labor Standards Act, 29 *U. S. C.*, Section 213(a)(1).

Statutes Involved

The pertinent provisions of the following statutes are printed in Appendix A hereto, *infra*, pp. 11-12: Act Number 379 of May 15, 1948 (29 *L. P. R. A.*, Sections 274, 288); Fair Labor Standards Act of 1938, as amended, 52 Stat. 1060, (29 *U. S. C.*, Sections 203(d), 213(a)(1), 218); Judiciary Act, 28 *U. S. C.*, Section 1258.

Statement

Petitioner herein is a labor organization within the meaning of the Labor Management Relations Act, 29 *U. S. C.*, Section 151 *et seq.* and during the period of time involved, August 29, 1953 to November 8, 1959, respondent herein occupied the position of president of the petitioning union. In his capacity as president of petitioner, respondent was its sole officer having been duly elected pursuant to the constitution and by-laws of the Union.

Respondent claimed compensation on various grounds (Appendix C, p. 23) however, pursuant to a Stipulation of the parties (Appendix C, p. 20) all his claims were waived except the one for hours worked in excess of eight hours a day. The original complaint was allegedly based on Act Number 379 of May 15, 1948, as amended, 29 *L. P. R. A.* 271 *et seq.*, hereinafter referred to as Act 379.

Petitioner alleged that respondent was not an employee of the Union witnin the purview of any law; and as special defenses alleged that, if respondent was not found to be

an employee, he was exempt from the overtime provisions, or in the alternative that he was an executive or an administrative employee also exempt from overtime provisions.

The Superior Court of Puerto Rico in the instant case below, Number 60-8370, dismissed the complaint on the ground that respondent, as president of a labor organization, was not the worker, employee or laborer referred to in the act regulating working hours (App. B hereto, *infra*, p. 15).

On writ of review filed by herein respondent before the Supreme Court of the Commonwealth of Puerto Rico in Civil Case R-62-128, the decision issued by the Superior Court was reversed. The Supreme Court of Puerto Rico relied heavily on the case of *Williams* v. *United Mine Workers*, 172 S. W. 2d 202 (1943).[1]

The Supreme Court of the Commonwealth of Puerto Rico also found that respondent, as president of petitioner, when performing regular visits to employers to ascertain compliance with collective bargaining agreements, was not performing exempt work and was an employee of the Union [2] for the purposes of the application of the law regarding working hours and days. The Court concluded that for the time spent by respondent in these activities, petitioner herein had to pay respondent for the hours so worked in excess of eight hours a day at the rate double his regular rate of pay.

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[1] This is the only case found in any jurisdiction dealing with this matter. This case is not here in point for it deals with a check weighman employed by a labor union to ascertain that union members working at a mine were credited with the correct amount of coal dug by them and thus an ordinary employee.

[2] The Supreme Court of Puerto Rico held such duty not to be one inherent in the duties of a president of a labor organization, Appendix B hereto, *infra*, p. 18.

Reasons for Granting the Writ

The stability of the labor movement would be greatly endangered if the doctrine enunciated in the instant case prevails. The impact of a decision holding that a president of a labor organization, while performing duties related to compliance and enforcement of collective bargaining agreements, is an "employee" for the purposes of overtime pay, not only is juridically erroneous but also has a detrimental effect upon the labor movement, a basic pillar of our democratic way of life.[2] Said decision is in open conflict with the applicable federal law and with the prevailing doctrine in favor of a uniform national labor policy.[3]

The Fair Labor Standards Act of 1938 as amended, 29 *U. S. C.*, 201 *et seq.*, hereinafter referred to as *F. L. S. A.*, is controlling in this case even though the action below was allegedly based on Act 379, enacted by the Legislature of the Commonwealth of Puerto Rico which in its Section 274 provides:

> "Every employer who employs or permits an employee to work during extra hours shall be obliged to pay him for each extra hour a wage rate equal to double the rate agreed upon for regular hours; *Provided, however, that every employer in an industry in Puerto Rico covered by the provisions of the Fair Labor Standards Act enacted by the Congress of the United States of America on June 25, 1938, as heretofore or hereafter amended*, shall be under obligation to pay only for each hour of work in excess of the legal eight hour working day, or in excess of forty (40) hours a week, a wage at the rate of not less than time and a half the rate of wage agreed upon for regular hours, save when by a decree

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[3] See for example, *Bethlehem Steel Co.* vs. *N. Y. L. B.*, 330 U. S. 767 (1947), for an analogous doctrine in this field holding invalid a state law as in conflict with the L. M. R. A. and the commerce clause of the Constitution of the United States.

> of the minimum wage board or by a collective labor agreement, other working and/or compensation standards is heretofore or hereafter fixed * * *" **(Emphasis supplied)**

The foregoing provision of Act 379 constitutes an adoption by the Legislature of the Commonwealth of Puerto Rico of the provisions of the *F. L. S. A.* Thus, it becomes obvious at the outset, that the right of respondent to overtime compensation depends on whether under the *F. L. S. A.* respondent would have been entitled to such compensation, and whether the policy of said federal statute bars respondent's claim for overtime compensation. The effect of the decision in this case is that under color of state law a right of action is granted in contravention to national federal policy.

The *F. L. S. A.* in its Section 3(d) explicitly states that the word "employer" includes a labor organization when acting as an employer. Thus, Congress included within the protection of the law all employees of labor organizations, as distinguished from officers and agents. It is clear, though, that labor organizations were left free from interference with respect to their officers and agents. Therefore, the decision of the Supreme Court of the Commonwealth of Puerto Rico in the instant case, to the effect that the president of a labor organization, when supervising the administration of collective bargaining agreements, becomes an employee doing non-exempt work openly contravenes the aforesaid congressional enactment.

By virtue of the above referred Section 274 of Act 379 the Legislature of Puerto Rico announced its intention to grant special treatment to any industry in Puerto Rico covered by the provisions of the *F. L. S. A.* Hence, the decision in the instant case allegedly based on Act 379, presupposes a finding that petitioner, in contemplation of the *F. L. S. A.*, was an "employer" with respect to its

president when performing certain supervisory functions relative to the administration of collective bargaining agreements. It also erroneously assumes that petitioner was an "employer" within the meaning of Section 3(d) of *F. L. S. A.*

The Supreme Court of Puerto Rico holds that the definition of "employee" contained in Act 379 is controlling.[4]

On the basis of said definition and the definition of employer contained in the same section of the law the Supreme Court of Puerto Rico holds that a labor organization is an employer with respect to its president and sole officer when performing duties related to the supervision of compliance by employers of collective bargaining agreements in effect.

The construction given by the Supreme Court of Puerto Rico to Act 379 is erroneous and in open conflict with the applicable federal law for it disregards the definition of employer contained in the *F. L. S. A.*, notwithstanding the fact that the federal statute is adopted by virtue of Section 5 of Act 379, *supra*, p. 6. In effect, the Commonwealth of Puerto Rico, through the enactment of Act 379 has legislated over interstate commerce and through Section 5 of said Act has adopted the provisions of the *F. L. S. A.* At the same time, as interpreted by the Supreme Court of Puerto Rico in the instant case, the basic policy enunciated in Section 3(d) of the *F. L. S. A.*, to the effect that the relationship between a labor organization and its officers and agents shall be free from regulation and interference, is completely disregarded. Under the *F. L. S. A.*, officers and agents of a labor organization have no cause of action

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[4] "'Employee' includes every employee, workman, day laborer, artisan, laborer, clerk, shop clerk, and every person employed for wages, salary, day wages or any other form of compensation in any occupation, establishment, business, or industry, excepting traveling agents, and peddlers. The word 'employee' shall not include executives, administrators or professionals", *29 L. P. R. A.* Section 288.

for overtime against the labor organization. The intent of Congress was to keep the labor movement free from regulation and interference except with respect to regular, ordinary employees working for labor organizations, such as clerical employees. Congress' concern is evidenced by the exclusion of labor organizations from the *F. L. S. A.* giving rise to the conclusion that this policy applies not only to actions brought under the *F. L. S. A.* but also that said law precludes states or other political subdivisions from pursuing a contrary policy.[5] In essence, Congress' mandate was that under its plenary power over interstate commerce, states were pre-empted from any interference with the labor movement which in any way might contravene the national policy in this area.[5] If the states are not permitted to regulate or restrain that which from its nature should be free from restriction, *Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298 (1924), then the Commonwealth of Puerto Rico may not circumvent congressional policy that accords the labor movement freedom from regulation that from its nature is necessary to preserve and promote so as to permit labor organizations to comply with their social duty in our democratic system.

Even if this Honorable Court should decide that no preemption exists, and that Act 379 may be properly applied to the relationship between labor organizations and their officers and agents, still the action in the case at bar hinges on a correct interpretation of Section 18 of the *F. L. S. A.* which allows states to establish higher standards regarding minimum wages and hours of work for the benefit of employees within the scope of the federal law. Thus, the Commonwealth of Puerto Rico has established, by virtue of Act 379 a standard different from the one fixed by federal law with respect to hours of work.

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[5] See *supra*, footnote 3; *Marine Engineers Beneficial Association v. Interlake Steamship Co.*, 8 L. ed. 2d 418 (1962); *Textile Workers v. Lincoln Mills*, 353 U. S. 448; *Steelworkers v. Warrior & Gulf Co.*, 363 U. S. 574; *In re Greens' Petition*, 369 U. S. 747 (1962).

Section 18 of the *F. L. S. A.* refers only to employers within the purview of the federal statute and may not be used by states to extend coverage over employers or employees taxatively excluded from the *F. L. S. A.* It must be construed together with every other section of said law. Regarding those persons explicitly excluded from the Act, the States may not under the guise of authority conferred by Section 18, establish regulatory measures thereupon. That which is excluded from the *F. L. S. A.* under the most elementary rules of statutory construction, must be deemed excluded from the purview of Section 18 of said federal law. A contrary interpretation would render Section 3(d) of the federal law academic.

Conclusion

Petitioner respectfully submits that the Supreme Court of the Commonwealth of Puerto Rico erroneously and in contravention with federal law in a field where a uniform national labor policy should prevail holds that a president of a labor organization is not an executive or administrative employee. This holding is in direct conflict with Sections 13(a) (1) and 3(d) of the *F. L. S. A.*[6]

We believe the instant case poses a novel question and in view of its direct relation with the national labor policy deserves review by this Honorable Court.

The impact of the decision of the Honorable Supreme Court of Puerto Rico is definitely detrimental to the labor movement in Puerto Rico as well as in the entire country. The adoption of this erroneous interpretation may result in an "open sesame" for thousands of claims by labor

[6] This holding is also in direct conflict with Regulation 541(1)(e) of the Secretary of Labor of the United States of America.

officers and agents against their organizations.[7] Labor organizations will be obliged to operate within restrictive limits regarding hours of employment of their officers and agents.

This decision if allowed to prevail may result in the debacle and ultimate destruction of organized labor, all of it in direct and open conflict with federal law and the national labor policy.

PRAYER

Wherefore it is respectfully prayed that the writ of certiorari herein requested be issued and that the judgment of the Supreme Court of the Commonwealth of Puerto Rico in case number 62-128 be reversed.

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[7] A writ of certiorari to be filed on this same day before this Court in the case of *Seafarers International Union et al.* vs. *Freddy Castro*, Civil Case R-63-12 before the Supreme Court of the Commonwealth of Puerto Rico, involves another wage claim filed by a labor organizer against a union operating in interstate commerce in Puerto Rico, decided against the defendant union on grounds similar to the ones stated by the Court below in the instant case.

APPENDIX A

Statutes:

1. 28 *U. S. C.*, 1258(3):

"Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

(1) * * *

(2) * * *

(3) By writ of certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution treaties, or statutes of, or commission held or authority exercised under the United States.

2. Act Number 379 of May 15, 1948:

(a) 29 L. P. R. A. Section 274:

"Every employer who employs or permits an employee to work during extra hours shall be obliged to pay him for each extra hour a wage rate equal to double the rate agreed upon for regular hours; Provided, however, that every employer in an industry in Puerto Rico covered by the provisions of the Fair Labor Standards Act enacted by the Congress of the United States of America on June 25, 1938, as heretofore or hereafter amended, shall be under obligation to pay only for each hour of work in excess of forty (40) hours a week, a wage at the rate of not less than time and a half the rate of wage agreed upon for regular hours, save when by a decree of the minimum wage board or by a collective labor agreement, other working and/or compensation standards is heretofore or hereafter fixed * * * *"

(b) 29 L. P. R. A. Section 288:

"'Employee' includes every employee, workman, day laborer, artisan, laborer, clerk, shop clerk, and every person employed for wages, salary, day wages or any other form of compensation in any occupation, establishment, business, or industry, excepting trav-

eling agents, and peddlers. The word "employee" shall not include executives, administrators, or professionals."

3. Fair Labor Standards Act, 29 *U.S.C.*, Section 203 (d):

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

29 *U.S.C.*, Section 213(a)(1):

"The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Secretary of Labor)."

29 *U.S.C.*, Section 218:

"No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act."

APPENDIX B

Opinion and Judgment Below

IN THE

SUPREME COURT OF PUERTO RICO

No. R 62-128

FRANCISCO VEGA MEDINA,

Plaintiff-Petitioner,

vs.

UNION OBREROS CERVECERIA CORONA COCA COLA, CANADA DRY Y RAMAS ANEXAS DE PUERTO RICO, U. G. T., affiliated to the U. B. W. AFL-CIO,

Defendant-Respondent.

WRIT OF REVIEW

Division composed by the Chief Justice Mr. Negrón-Fernández, Mr. Justice Blanco-Lugo and Mr. Justice Ramirez Bages.

Opinion of the Court delivered by Mr. Justice Blanco-Lugo, San Juan, Puerto Rico, November 30, 1962.

This case involves the novel question of the correctness of a wage claim against a labor union for extra hours worked for it by its president. Does an employer-employee relationship exist between the union and its president permitting the application of the provisions of the Act governing working hours in Puerto Rico, Act No. 379, of May 15, 1948, 29 L. P. R. A. sec. 271 *et seq.*? In the affirmative, would the plaintiff be excluded as an executive officer or administrator? To a great extent, the answer to the questions posed depends on the specific facts of each case.

Appendix B

Petitioner, Francisco Medina Vega, held the post of President of the "Unión de Trabajadores de la Industria Cervecera y Bebidas Refrescantes y Ramas Anexas de Puerto Rico", affiliated to the "Unidad General de Trabajadores de Puerto Rico (UGT)"[1] from August 29, 1953 to November 8, 1959, that is, for an approximate period of six years and three months. From the conclusions of fact of the trial court it is deduced that in the performance of the duties of his post, the plaintiff occasionally worked in excess of eight hours a day.[2]

In addition to the usual duties flowing from the presidency of any organization representing the Union, complying and enforcing compliance with the agreements and resolutions of the annual meetings and of the board of directors, as well as the by-laws of internal government; presiding at the meetings of the Union and the Board of Directors; rendering reports of the steps taken by him; appointing committees and signing official documents, as well as checks and orders of payment—he was required by regulation to offer his services exclusively to the Union, and to that effect, he was required to visit daily all the factories in the metropolitan area with which there were collective bargaining agreements, and periodically, annex branches or locals.[3]

As compensation for his services he was assigned "the same salary received by the workers of his trade in the Industry, but that salary shall not exceed thirty five dollars ($35.00) a week [and] the Union shall further pay to the

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[1] In July 1959, a disaffiliation took place and the defendant union was known as "Obreros Unidos de la Cervecería Corona, Coca Cola, Canada Dry y Ramas Anexas de Puerto Rico, Independiente", and was identified with the initials O. U. I. At present it is affiliated to the U. B. W., AFL-CIO.

[2] That occurred during regular or extraordinary meetings of the members of the union, meetings of the Board of Directors of the organization and meetings of the Grievance Committee and while visiting the locals in different towns of the Island.

[3] Articles 39 and 40 of the By-laws of June 21, 1952; Article 35 of the By-laws of December 19, 1954; Article 34 of the By-laws of December 1956; Article 25 of the By-laws of July 12, 1959.

Appendix B

President all benefits acquired by the Union for his members through collective bargaining agreements, such as vacations with pay, Christmas bonus, medical and hospitalization plan and Social Security" (1952 and 1954 by-laws); "the salary received by a skilled worker of the Corona for 48 hours a week" and the fringe benefits referred to (1956 by-laws); "a salary of a skilled worker in the department where he worked for the Companies"; and transportation expenses and the fringe benefits indicated (1959 by-laws). It should be observed that the Union paid to plaintiff a wage that corresponded to the rates mentioned in the collective agreement. The regular working period was paid to him at the rates per hour indicated below:

August 29, 1953 to December 31, 1953.....	$0.625
January 1, 1954 to December 17, 1954.....	0.725
December 18, 1954 to March 22, 1957.....	0.935
September 7, 1957 to December 27, 1957....	1.15
January 7, 1958 to February 27, 1958.....	1.15
March 7, 1958 to November 8, 1959.....	1.20

The trial court concluded that the plaintiff, as an official of the defendant Union, is not the worker, employee or laborer referred to in the Act regulating working hours and, consequently, it dismissed the complaint. To this effect, it made reference to the definition of worker or employee included in section 1 of the Act No. 10 of November 14, 1917, as added by Act No. 12 of July 2, 1923, 32 L. P. R. A. sec. 3102,[4] and section 16 of the Act No. 379, *supra*, 29 L. P. R. A. Sec. 285,[5] which lists the occupations subject to said Act.

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[4] The word "worker" as used in this Act shall comprise all manual laborers of either sex and such natural persons as may be employed in domestic services or occupations of both sexes and the word "employee" shall comprise all kinds of artisans, employees or clerks of business or industry, in the general acceptation of these last wo words.

This section was superseded by Section 2 of Act No. 2 of October 17, 1961, 32 L. P. R. A. (Supl. 1961), Section 3119, p. 51, which follows substantially the previous wording, but which significantly in referring to the word "employee" indicates that "it is used in its fullest meaning."

Appendix B

In order to determine the question posed by this writ the definition of worker or employee contained in Act No. 10 of 1917 is irrelevant, for the same refers to the special procedure to institute claims, and does not cover any substantive aspect of the claim for extra hours of work. Regarding Act. No. 379, we must consider that it defines an employee as "—every person employed for wages, salary, day wages, or any other form of compensation in any occupation * * *"; that occupation includes "* * * any service, work, labor, help, or toil that an employee performs for his employer"; that employer includes every natural or artificial person and that it is emphasized that the provisions of this Act shall govern * * * "in every place devoted to the *rendering of service of any kind through payment*." Secs. 16 and 19 of Act No. 379 of May 15, 1948, 29 L. P. R. A. Secs. 285 and 288. From the foregoing it is deduced that under certain circumstances, a labor organization can be considered as an employer for the purposes of the application of the law regarding working hours and days.

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[5] "Section 16. The provisions of this Act shall govern in every commercial, industrial, and agricultural establishment; in every shop, factory, central, mill, and manufactory; in every ranch, property, farm, estate, and plantation; in every public service enterprise; in every gainful business, including printeries, publishing houses, newspaper enterprises, clinics, hospitals, pharmacies, teaching institutions, boarding houses, hotels, eating houses, restaurants, stores, groceries, warehouses, depots, markets, garages, bakeries, theatres, race tracks, casinos, and other similar businesses; in every business office or establishment, law office, consulting room and professional office, and in every place devoted to the rendering of services of any kind through payment.

"The provisions of this Act shall also be applied to all chauffeurs and drivers of public and private motor vehicles, except those who work on a commission basis.

"The provisions of this Act shall not be applied to persons employed in domestic service: *Provided, however*, that they shall be entitled to one day of rest for every six days of work.

"The provisions of this Act shall not apply to the employees of the Commonwealth Government, of the municipal governments, of the Government of the Capital, or of the agencies or instrumentalities of said Governments, excepting such agencies, and instrumentalities as are devoted to agricultural, industrial, commercial or public service enterprises."

Appendix B

The case of *Williams* v. *United Mine Workers of America*, 172 S. W. 2d 202 (Ky. 1943) involving the application of the Federal Fair Labor Standards Act,[6] held that the congressional intention was not to exclude labor organizations from the provisions of the law when the union *acted as an employer*. It emphasized that in spite of the basic purpose of mutual benefit which moves the organization of unions and the absence of any intention of profit, the use of employees was conceived as necessary and appropriate in order to achieve the goals for which they are established and to protect the interests of its members. Therefore, when a union employed a person for a daily wage, to check the weight of charcoal extracted by the members of the Union, in order to credit the correct amount to each miner, the relation of employer and employee was created.[7]

Even for the purposes of collective bargaining it has been held that a Union can be considered as an employer. *Office Employees I. U.* v. *N. L. R. B.*, 353 U. S. 313 (1957); *Air Line Pilots Ass'n*, 97 N. L. R. B. 929 (1951); see *N. L. R. B. Can not refuse jurisdiction over labor union acting as employer*, 57 Col. L. Rev. 1029 (1957).

Having established the basic fact that a union is covered by the provisions of Act No. 379 *when it acts as an employer*, let us examine carefully the facts of this case to determine whether the relation of employer and employee was created between the parties. We readily agree that if plaintiff's duties had been limited to those normally and ordinarily performed by the president of an organization—hereinafter referred to—the very nature of the duties would

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[6] Section 3(d) of the Federal Fair Labor and Standards Act, 29 U. S. C. sec. 203(d) defines employer as "including any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any state or political subdivision of a state, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

[7] The case of *Williams* is the object of a commentary in 92 U. of Pa. L. Rev. 327 (1944), but it is not related with the question at bar.

exclude the relation above mentioned. See, *The Unpaid Local Leader*, 3 Lab. L. J. 685 (1952). Nevertheless, under the label of "president" he was assigned duties which properly belong to an ordinary employee, such as visiting daily the enterprises in the metropolitan area with which the Union had relations, with the obvious purpose of supervising compliance with the obligations contracted by virtue of the collective agreement, all of it for the defense and protection of the interests of its affiliates. This obligation extended to the limited supervision of all the local filial unions in the different towns of the Island. In this respect, it is significant the manner in which his compensation was fixed, always considering him equal to an employee of the enterprise in the field to which he had been engaged prior to being designated to preside the Union, and that he preserved all the fringe benefits provided for the employees in the contract. All these concurring circumstances convince us that regarding these activities of daily supervision in compliance with the collective agreement in the metropolitan area and in the Island, the plaintiff was an employee of the Union, and if while performing such activities he worked in excess of eight hours a day, the Union—as an employer—is bound to pay him therefor at double rate.

We should not forget that the legislation regarding the regular working hours and days is an effective measure in the protection of the health, security, and life of the workers. It seems eminently fair that the Unions—a spearhead in the establishment of this measure for social revindication—be the first to practice what they preach. A contrary solution would devaluate the content of this right.

A mere examination of plaintiff's duties, to which we have been referring, that is, excluding those generally associated with the direction of a labor organization, points out that in relation to the same he is not excluded as being an executive officer or an administrator. In *Piñán* v. *Mayaguez Sugar Co.*, 83 P. R. R. — (1961 ratified in *Morales* v. *Superior Court*, 83 P. R. R. — (1961), we indicated that

beginning January 15, 1952, the determination of whether or not plaintiff was an executive officer depended on the concurrence of the requirements enumerated in Article 1 of the Regulations approved by the Secretary of Labor to define said phrase. 29 R. & R. P. R. sec 246-1.[8] A similar pro-

[8] Said section reads as follows:

"§ 246 e-1. *Executive*

"The term 'executive', for the purposes of sec. 33 of the Minimum Wage Act' of Puerto Rico [29 L. P. R. A. § 246e], shall mean

"(1) any employee

"(A) whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof; and

"(B) who customarily and regularly directs the work of two or more other employees therein; or of a department or subdivision thereof; and

"(C) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given special attention; and

"(D) who customarily and regularly exercises discretionary powers; and

"(E) who does not devote over 20% of his workweek to activities not directly or intimately related to the performance of the work described in paragraph (1), clauses (A) to (D) of this section; provided, that this clause (E) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; or when he owns at least a 20% interest in the enterprise he works for; and

"(F) who is compensated for his services on a fixed basis (by day, week, fortnightly, or longer periods) equivalent to a weekly salary of not less than $30 exclusive of board, lodging, or other facilities; or

"(2) any employee

"(A) whose work complies with the requirements of paragraph (1), clauses (A) and (B) of this section; and

"(B) who is compensated for his services on a fixed basis (by day, week, fortnightly, or longer periods), equivalent to a weekly salary of not less than $100, exclusive of board, lodging, or other facilities."

nouncement is applicable with the purpose of determining whether we are dealing with an administrator, as defined in the regulations above mentioned. 29 R. & R. P. R. sec 246-2.[9]

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[9] Said section reads as follows:

§ 246e-2. *Administrator*

"The term 'administrator' for the purposes of sec. 33 of the Minimum Wage Act of Puerto Rico [29 L. P. R. A. § 246e] shall mean:

"(1) any employee

"(A) whose primary duty consists of the performance of office work or non-manual work outside the office being either directly related to management policies or with general business operations of the employer or the clients of the employer; and

"(B) who customarily and regularly exercises discretion and independent judgment; and

"(C) (i) who regularly and directly assists the owner or one of the owners of the enterprise, or an employee employed in an executive or administrative capacity (as such terms are defined in this Division); or

"(ii) who performs under only general supervision work of a technical and specialized nature requiring special training, experience, or knowledge; or

"(iii) who executes under only general supervision special assignments and tasks; and

"(D) who does not devote over 20% of his workweek to activities not directly or intimately related to the performance of the work described in paragraph (1), clauses (A) to (C) of this section; and

"(E) who is compensated for his services on a fixed basis (by day, week, fortnightly, or longer periods) or on a percentage or fee basis equivalent to a monthly salary of not less than $200, exclusive of board, lodging, or other facilities; or

"(2) any employee

"(A) whose work complies with the requirements of paragraph (1), clauses (A) and (B) of this section; and

"(B) who is compensated for his services on a fixed basis (by day, week, fortnightly, or longer periods) or on a percentage or fee basis equivalent to a weekly salary of not less than $100, exclusive of board, lodging, or other facilities."

It suffices to say that here the employment does not imply the exercise of discretionary faculties.

By virtue of the foregoing, the judgment rendered by the Superior Court, San Juan Part, on April 17, 1962, will be reversed, and the case will be remanded in order that after consideration of the evidence presented, the plaintiff be compensation at double rate the extra hours worked as an employee, according to this opinion.

/s/ Luis Blanco Lugo
Luis Blanco Lugo
Associate Justice

Appendix B

[SAME TITLE]

Division composed by the Chief Justice Mr. Negrón-Fernández, Mr. Justice Blanco-Lugo and Mr. Justice Ramírez Bages.

JUDGMENT

San Juan, Puerto Rico, November 30, 1962.

For the reasons stated in the foregoing opinion, the judgment rendered by the Superior Court, San Juan Part, on April 17, 1962, is reversed and the case is remanded to said Court for further proceedings not inconsistent with said opinion.

It was thus decreed and ordered by the Court as witnesses the signature of the Chief Justice.

Luis Negrón Fernández
Chief Justice

I attest:

Ignacio Rivera
Secretary

Appendix B

[SAME TITLE]

Division composed by the Chief Justice Mr. Negrón-Fernández, Mr. Justice Blanco-Lugo and Mr. Justice Ramírez Bages.

ORDER

San Juan, Puerto Rico, February 1st, 1963.

The motions to order the remand of the mandate and for reconsideration are hereby denied.

It was so ordered by the Court as witnesses the signature of the Chief Justice.

/s/ Luis Negrón Fernández
Chief Justice

I attest:

/s/ Ignacio Rivera
Secretary